

105TH CONGRESS
2D SESSION

H. R. 3766

To streamline, modernize, and enhance the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1998

Mr. CANADY of Florida introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on the Judiciary, Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To streamline, modernize, and enhance the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Plant Protection Act”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

- Sec. 101. Plant pests.
- Sec. 102. Restrictions on movement: Plants, plant products, biological control organisms, articles, noxious weeds and means of conveyance.
- Sec. 103. Notification of arrival and inspection before movement: Plants, plant products, biological control organisms, plant pests, noxious weeds, articles, means of conveyance.
- Sec. 104. Remedial measures or disposal for plant pests or noxious weeds: Extraordinary emergency.
- Sec. 105. Inspections, seizures, and warrants.
- Sec. 106. Control of grasshoppers and mormon crickets.
- Sec. 107. Cooperation.
- Sec. 108. Certification for exports.
- Sec. 109. Buildings, land, people, claims, and agreements.
- Sec. 110. Reimbursable agreements.
- Sec. 111. Violations—penalties.
- Sec. 112. Enforcement.
- Sec. 113. Appropriations and transfer authority.
- Sec. 114. Regulations and orders.
- Sec. 115. Preemption.
- Sec. 116. Severability.
- Sec. 117. Repeals.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the detection, control, eradication, suppres-
 4 sion, prevention, or retardation of the spread of
 5 plant pests or noxious weeds is necessary for the
 6 protection of the agriculture, environment, and econ-
 7 omy of the United States;

8 (2) biological control is often a desirable, low-
 9 risk means of ridding crops and other plants of
 10 plant pests and noxious weeds, and its use should be
 11 facilitated by the Department of Agriculture, other
 12 Federal agencies, and States whenever feasible;

13 (3) the smooth movement of enterable plants,
 14 plant products, biological control organisms, or other
 15 articles into, out of, or within the United States is

1 vital to the Nation's economy and should be facili-
2 tated to the extent possible;

3 (4) export markets could be severely impacted
4 by the introduction or spread of plant pests or nox-
5 ious weeds into or within the United States;

6 (5) the unregulated movement of plant pests,
7 noxious weeds, plants, certain biological control or-
8 ganisms, plant products, and articles capable of har-
9 boring plant pests or noxious weeds could present
10 an unacceptable risk of introducing or spreading
11 plant pests or noxious weeds;

12 (6) the existence on any premises in the United
13 States of a plant pest or noxious weed new to or not
14 known to be widely prevalent in or distributed within
15 and throughout the United States could constitute a
16 threat to crops and other plants or plant products
17 of the United States and burden interstate com-
18 merce or foreign commerce; and

19 (7) all plant pests, noxious weeds, plants, plant
20 products, articles capable of harboring plant pests or
21 noxious weeds regulated under this Act are in or af-
22 fect interstate commerce or foreign commerce.

23 **SEC. 3. DEFINITIONS.**

24 For the purposes of this Act (unless otherwise speci-
25 fied):

1 (1) ARTICLE.—The term “article” means any
2 material or tangible object that could harbor pests,
3 diseases, or noxious weeds.

4 (2) BIOLOGICAL CONTROL ORGANISM.—The
5 term “biological control organism” means any
6 enemy, antagonist, or competitor used to control a
7 plant pest or noxious weed.

8 (3) ENTER.—The term “enter” means to move
9 into the commerce of the United States.

10 (4) ENTRY.—The term “entry” means the act
11 of movement into the commerce of the United
12 States.

13 (5) EXPORT.—The term “export” means to
14 move from the United States to any place outside of
15 the United States.

16 (6) EXPORTATION.—The term “exportation”
17 means the act of movement from the United States
18 to any place outside the United States.

19 (7) IMPORT.—The term “import” means to
20 move into the territorial limits of the United States.

21 (8) IMPORTATION.—The term “importation”
22 means the act of movement into the territorial limits
23 of the United States.

24 (9) INTERSTATE.—The term “interstate”
25 means—

1 (A) from one State into or through any
2 other State; or

3 (B) within the District of Columbia,
4 Guam, the Virgin Islands of the United States,
5 or any other territory or possession of the
6 United States.

7 (10) INTERSTATE COMMERCE.—The term
8 “interstate commerce” means trade, traffic, move-
9 ment, or other commerce—

10 (A) between a place in a State and a point
11 in another State, or between points within the
12 same State but through any place outside that
13 State; or

14 (B) within the District of Columbia,
15 Guam, the Virgin Islands of the United States,
16 or any other territory or possession of the
17 United States.

18 (11) MEANS OF CONVEYANCE.—The term
19 “means of conveyance” means any personal property
20 used for or intended for use for the movement of
21 any other personal property.

22 (12) MOVE.—

23 (A) IN GENERAL.—The term “move”
24 means to—

1 (i) carry, enter, import, mail, ship, or
2 transport;

3 (ii) aid, abet, cause, or induce the car-
4 rying, entering, importing, mailing, ship-
5 ping, or transporting;

6 (iii) offer to carry, enter, import, mail,
7 ship, or transport;

8 (iv) receive to carry, enter, import,
9 mail, ship, or transport; or

10 (v) allow any of the activities included
11 within this paragraph.

12 (B) MOVEMENT AND MOVING.—The terms
13 “movement” and “moving” shall be defined in
14 accordance with this paragraph.

15 (13) NOXIOUS WEED.—The term “noxious
16 weed” means any plant, seed, reproductive part, or
17 propagative part of any plant that can be directly or
18 indirectly injure or cause damage to crops, including
19 nursery stock, plant products, livestock, poultry, or
20 other interests of agriculture (including irrigation,
21 navigation, the fish or wildlife resources of the
22 United States, the public health, or the environ-
23 ment).

24 (14) PERMIT.—The term “permit” means a
25 written or oral authorization, including by electronic

1 methods, by the Secretary to move plants, plant
2 products, biological control organisms, plant pests,
3 noxious weeds, or articles under conditions pre-
4 scribed by the Secretary.

5 (15) PERSON.—The term “person” means any
6 individual, partnership, corporation, association,
7 joint venture, or other legal entity.

8 (16) PLANT.—The term “plant” means any
9 plant or plant part for or capable of propagation,
10 including trees, tissue cultures, plantlet cultures,
11 pollen, shrubs, vines, cuttings, grafts, scions, buds,
12 bulbs, roots, and seeds.

13 (17) PLANT PEST.—The term “plant pest”
14 means any living stage of a protozoan, animal, bac-
15 teria, fungus, virus, viroid, infectious agent, or para-
16 sitic plant that can directly or indirectly injure or
17 cause damage to, or cause disease in any plant or
18 plant product or any article similar to or allied with
19 any of the articles in this paragraph.

20 (18) PLANT PRODUCT.—The term “plant prod-
21 uct” means any flower, fruit, vegetable, root, bulb,
22 seed, or other plant part (not included in the defini-
23 tion of the term “plant” in paragraph (16)); or any
24 manufactured or processed plant or plant part.

1 (19) SECRETARY.—The term “Secretary”
2 means the Secretary of Agriculture or any other in-
3 dividual to whom authority is delegated by the Sec-
4 retary under this Act.

5 (20) STATE.—The term “State” means any of
6 the several States of the United States, the Com-
7 monwealth of the Northern Mariana Islands, the
8 Commonwealth of Puerto Rico, the District of Co-
9 lumbia, Guam, the Virgin Islands of the United
10 States, or any other territory or possession of the
11 United States.

12 (21) THIS ACT.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “this Act” means
15 the Plant Protection Act and any regulation or
16 order issued by the Secretary under the Plant
17 Protection Act.

18 (B) EXCEPTION.—For the purposes of this
19 section, the term “this Act” means the Plant
20 Protection Act.

21 (22) UNITED STATES.—The term “United
22 States” means all of the States.

23 **SEC. 101. PLANT PESTS.**

24 (a) PROHIBITION OF UNAUTHORIZED MOVEMENT OF
25 PLANT PESTS.—Except as provided in subsection (b), no

1 person shall import, enter, export, or move in interstate
2 commerce any plant pest, unless the movement is author-
3 ized under general or specific permit and is in accordance
4 with such regulations as the Secretary may issue to pre-
5 vent the introduction into the United States or interstate
6 dissemination of plant pests.

7 (b) AUTHORIZATION OF MOVEMENT OF PLANT
8 PESTS BY REGULATION.—

9 (1) IN GENERAL.—The Secretary may issue
10 regulations which allow the movement of a plant
11 pest in interstate commerce without further restric-
12 tion when the Secretary finds that a permit is not
13 necessary.

14 (2) PETITION TO ADD OR REMOVE PLANT
15 PESTS FROM REGULATION.—

16 (A) IN GENERAL.—Any person may peti-
17 tion the Secretary to add or remove a plant
18 pest from regulations promulgated by the Sec-
19 retary.

20 (B) RESPONSE TO PETITION BY THE SEC-
21 RETARY.—The Secretary shall act on any peti-
22 tion within a reasonable time and notify the peti-
23 tioner of the final action the Secretary takes
24 on the petition. The Secretary's determination
25 on the petition shall be based on sound science.

1 (c) PROHIBITION OF UNAUTHORIZED MAILING OF
2 PLANT PESTS.—

3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), no person shall mail or deliver from any
5 post office or by any mail carrier any letter or pack-
6 age containing any plant pest, unless it is mailed in
7 accordance with such regulations as the Secretary
8 may issue to prevent the introduction into the
9 United States or interstate dissemination of plant
10 pests.

11 (2) EXCEPTION FOR CERTAIN FEDERAL EM-
12 PLOYEES.—This subsection shall not apply to any
13 employee of the United States in the performance of
14 the duties of the employee in handling the mail.

15 (3) APPLICATION OF POSTAL LAWS AND REGU-
16 LATIONS.—Nothing in this subsection shall author-
17 ize any person to open any mailed letter or other
18 mailed sealed matter except in accordance with the
19 postal laws and regulations.

20 (d) REGULATIONS.—Regulations issued by the Sec-
21 retary to implement subsections (a), (b), and (c) may in-
22 clude provisions requiring that any plant pest imported,
23 entered, to be exported, moved in interstate commerce,
24 mailed, or delivered from any post office—

1 (1) be accompanied by a permit issued by the
2 Secretary prior to the importation, entry, expor-
3 tation, movement in interstate commerce, mailing, or
4 delivery of the plant pest;

5 (2) be accompanied by a certificate of inspec-
6 tion issued (in a manner and form required by the
7 Secretary) by appropriate officials of the country or
8 State from which the plant pest is to be moved;

9 (3) be raised under post-entry quarantine con-
10 ditions by or under the supervision of the Secretary
11 for the purposes of determining whether the plant
12 pest may be infested with other plant pests, may
13 pose a significant risk of causing injury to, damage
14 to, or disease in any plant or plant product, or may
15 be a noxious weed; and

16 (4) be subject to remedial measures the Sec-
17 retary determines necessary to prevent the spread of
18 plant pests.

19 **SEC. 102. RESTRICTIONS ON MOVEMENT: PLANTS, PLANT**
20 **PRODUCTS, BIOLOGICAL CONTROL ORGA-**
21 **NISMS, ARTICLES, NOXIOUS WEEDS AND**
22 **MEANS OF CONVEYANCE.**

23 (a) IN GENERAL.—The Secretary may prohibit or re-
24 strict the importation, entry, exportation, or movement in
25 interstate commerce of any plant, plant product, biological

1 control organism, noxious weed, article, or any means of
2 conveyance, if the Secretary determines that the prohibi-
3 tion or restriction is necessary to prevent the introduction
4 into the United States or the interstate dissemination of
5 a plant pest or noxious weed.

6 (b) REGULATIONS.—The Secretary may issue regula-
7 tions to implement subsection (a), including regulations
8 requiring that any plant, plant product, biological control
9 organism, noxious weed, article, or any means of convey-
10 ance imported, entered, to be exported, or moved in inter-
11 state commerce—

12 (1) be accompanied by a permit issued by the
13 Secretary prior to the importation, entry, expor-
14 tation, or movement in interstate commerce;

15 (2) be accompanied by a certificate of inspec-
16 tion issued (in a manner and form required by the
17 Secretary) by appropriate officials of the country or
18 State from which the plant, plant product, biological
19 control organism, noxious weed, article, or means of
20 conveyance to be moved;

21 (3) be subject to remedial measures the Sec-
22 retary determines to be necessary to prevent the
23 spread of plant pests or noxious weeds; and

24 (4) with respect to plants or biological control
25 organisms, be grown or handled under post-entry

1 quarantine conditions by or under the supervision of
2 the Secretary for the purposes of determining wheth-
3 er the plant or biological control organism may be
4 infested with plant pests or may be a plant pest or
5 noxious weed.

6 (c) NOXIOUS WEEDS.—

7 (1) REGULATIONS.—In the case of noxious
8 weeds, the Secretary may publish, by regulation, a
9 list of noxious weeds that are prohibited or re-
10 stricted from entering the United States or that are
11 subject to restrictions on interstate movement within
12 the United States.

13 (2) PETITION TO ADD OR REMOVE PLANTS
14 FROM REGULATION.—

15 (A) IN GENERAL.—Any person may peti-
16 tion the Secretary to add or remove a plant spe-
17 cies from regulations promulgated by the Sec-
18 retary.

19 (B) DUTIES OF THE SECRETARY.—The
20 Secretary shall act on any petition within a rea-
21 sonable time and notify the petitioner of the
22 final action the Secretary takes on the petition.
23 The Secretary's determination on the petition
24 shall be based on sound science.

25 (d) BIOLOGICAL CONTROL ORGANISMS.—

1 (1) REGULATIONS.—In the case of biological
2 control organisms, the Secretary may publish, by
3 regulation, a list of organisms whose movement in
4 interstate commerce is not prohibited or restricted.
5 Any listing may take into account distinctions be-
6 tween organisms such as indigenous, non-indigenous,
7 newly introduced, or commercially raised.

8 (2) PETITION TO ADD OR REMOVE BIOLOGICAL
9 CONTROL ORGANISMS FROM THE REGULATIONS.—

10 (A) IN GENERAL.—Any person may peti-
11 tion the Secretary to add or remove a biological
12 control organism from regulations promulgated
13 by the Secretary.

14 (B) DUTIES OF THE SECRETARY.—The
15 Secretary shall act on any petition within a rea-
16 sonable time and notify the petitioner of the
17 final action the Secretary takes on the petition.
18 The Secretary's determination on the petition
19 shall be based on sound science.

1 **SEC. 103. NOTIFICATION OF ARRIVAL AND INSPECTION BE-**
2 **FORE MOVEMENT: PLANTS, PLANT PROD-**
3 **UCTS, BIOLOGICAL CONTROL ORGANISMS,**
4 **PLANT PESTS, NOXIOUS WEEDS, ARTICLES,**
5 **MEANS OF CONVEYANCE.**

6 (a) NOTIFICATION REQUIREMENTS OF THE SEC-
7 RETARY OF THE TREASURY.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the Secretary of the Treasury shall
10 promptly notify the Secretary of the arrival of any
11 plant, plant product, biological control organism,
12 plant pest, or noxious weed at a port of entry and
13 hold the plant, plant product, biological control orga-
14 nism, plant pest, or noxious weed until inspected
15 and authorized for entry into or transit movement
16 through the United States, or otherwise released by
17 the Secretary.

18 (2) EXCEPTIONS.—Paragraph (1) shall not
19 apply to any plant, plant product, biological control
20 organism, plant pest, or noxious weed that is im-
21 ported from countries or regions of countries that
22 the Secretary designates, pursuant to such regula-
23 tions as the Secretary may issue, as exempt from the
24 requirements of this subsection.

25 (b) NOTIFICATION REQUIREMENTS OF RESPONSIBLE
26 PARTIES.—The person responsible for any plant, plant

1 product, biological control organism, plant pest, noxious
2 weed, article, or means of conveyance required to have a
3 permit under section 101 or 102 shall promptly, upon ar-
4 rival at the port of entry and before the plant, plant prod-
5 uct, biological control organism, plant pest, noxious weed,
6 article, or means of conveyance is moved from the port
7 of entry, notify the Secretary, or at the Secretary's direc-
8 tion, the proper official of the State to which the plant,
9 plant product, biological control organism, plant pest, nox-
10 ious weed, article, or means of conveyance is destined, or
11 both, as the Secretary may prescribe, of—

12 (1) the name and address of the consignee;

13 (2) the nature and quantity of the plant, plant
14 product, biological control organism, plant pest, nox-
15 ious weed, article, or means of conveyance proposed
16 to be moved; and

17 (3) the country and locality where the plant,
18 plant product, biological control organism, plant
19 pest, noxious weed, article, or means of conveyance
20 was grown, produced, or located.

21 (c) PROHIBITION ON MOVEMENT OF ITEMS WITH-
22 OUT AUTHORIZATION.—No person shall move from the
23 port of entry or interstate any imported plant, plant prod-
24 uct, biological control organism, plant pest, noxious weed,
25 article, or means of conveyance unless the imported plant,

1 plant product, biological control organism, plant pest, nox-
2 ious weed, article, or means of conveyance has been in-
3 spected and authorized for entry into or transit movement
4 through the United States, or otherwise released by the
5 Secretary.

6 **SEC. 104. REMEDIAL MEASURES OR DISPOSAL FOR PLANT**
7 **PESTS OR NOXIOUS WEEDS: EXTRAORDINARY**
8 **EMERGENCY.**

9 (a) IN GENERAL.—

10 (1) HOLD, TREAT OR DESTROY ITEMS.—Except
11 as provided in subsection (b)(3), the Secretary may,
12 whenever the Secretary deems it necessary in order
13 to prevent the dissemination of any plant pest or
14 noxious weed new to or not known to be widely prev-
15 alent or distributed within and throughout the
16 United States, hold, seize, quarantine, treat, apply
17 other remedial measures to, destroy, or otherwise
18 dispose of any plant, plant pest (not including a
19 plant), biological control organism, plant product,
20 article, or means of conveyance that—

21 (A) is moving into or through the United
22 States or interstate, or has moved into or
23 through the United States or interstate and—

24 (i) the Secretary has reason to believe
25 is a plant pest or noxious weed or is in-

1 fested with a plant pest or noxious weed at
2 the time of the movement; or

3 (ii) is or has been otherwise in viola-
4 tion of this Act;

5 (B) has not been maintained in compliance
6 with a post-entry quarantine requirement; or

7 (C) is the progeny of any plant, biological
8 control organism, plant product, plant pest, or
9 noxious weed that is moving into or through the
10 United States or interstate, or has moved into
11 the United States or interstate in violation of
12 this Act.

13 (2) AUTHORITY TO ORDER AN OWNER TO
14 TREAT OR DESTROY.—

15 (A) IN GENERAL.—Except as provided in
16 subsection (b)(3) of this section, the Secretary
17 may order the owner of any plant, biological
18 control organism, plant product, plant pest,
19 noxious weed, article, or means of conveyance
20 subject to action under subsection (a)(1), or the
21 owner's agent, to treat, apply other remedial
22 measures to, destroy, or otherwise dispose of
23 the plant, biological control organism, plant
24 product, plant pest, noxious weed, or means of
25 conveyance, without cost to the Federal Govern-

1 ment and in the manner the Secretary deems
2 appropriate.

3 (B) FAILURE TO COMPLY WITH AN
4 ORDER.—If the owner or agent of the owner
5 fails to comply with the Secretary's order, the
6 Secretary may take an action authorized by
7 subsection (a)(1) and recover from the owner or
8 agent of the owner the costs of any care, han-
9 dling, application of remedial measures or dis-
10 posal incurred by the Secretary in connection
11 with actions taken under subsection (a)(1).

12 (3) CLASSIFICATION SYSTEM.—

13 (A) IN GENERAL.—To facilitate control of
14 noxious weeds, the Secretary may develop a
15 classification system to describe the status and
16 action levels for noxious weeds. The classifica-
17 tion system may include the current geographic
18 distribution, relative threat, and actions initi-
19 ated to prevent introduction or distribution.

20 (B) MANAGEMENT PLANS.—In conjunction
21 with the classification system, the Secretary
22 may develop integrated management plans for
23 noxious weeds for the geographic region or eco-
24 logical range where the noxious weed is found
25 in the United States.

1 (b) EXTRAORDINARY EMERGENCY.—

2 (1) AUTHORITY OF THE SECRETARY.—In ac-
3 cordance with paragraph (2), whenever the Sec-
4 retary determines that any extraordinary emergency
5 exists because of the presence of a plant pest or nox-
6 ious weed new to or not known to be widely preva-
7 lent in or distributed within and throughout the
8 United States and that the presence of the plant
9 pest or noxious weed threatens plants or plant prod-
10 ucts of the United States, the Secretary may—

11 (A) hold, seize, quarantine, treat, apply
12 other remedial measures to, destroy, or other-
13 wise dispose of, any plant, biological control or-
14 ganism, plant product, article, or means of con-
15 veyance that the Secretary has reason to believe
16 is infested with the plant pest or noxious weed;

17 (B) quarantine, treat, or apply other reme-
18 dial measures to any premises, including any
19 plants, biological control organisms, plant prod-
20 ucts, articles, or means of conveyance on the
21 premises, that the Secretary has reason to be-
22 lieve is infested with the plant pest or noxious
23 weed;

24 (C) quarantine any State or portion of a
25 State in which the Secretary finds the plant

1 pest or noxious weed or any plant, biological
2 control organism, plant product, article, or
3 means of conveyance that the Secretary has
4 reason to believe is infested with the plant pest
5 or noxious weed; and

6 (D) prohibit or restrict the movement with-
7 in a State of any plant, biological control orga-
8 nism, plant product, article, or means of con-
9 veyance when the Secretary determines that the
10 prohibition or restriction is necessary to prevent
11 the dissemination of the plant pest or noxious
12 weed or to eradicate the plant pest or noxious
13 weed.

14 (2) PROCEDURES.—

15 (A) IN GENERAL.—The Secretary may
16 take action under this subsection upon finding,
17 after review and consultation with the Governor
18 or other appropriate official of the State, that
19 the measures being taken by the State are inad-
20 equate to eradicate the plant pest or noxious
21 weed.

22 (B) NOTIFICATION PROCEDURES.—

23 (i) IN GENERAL.—Except as provided
24 in clause (ii), before any action is taken in
25 any State under this subsection, the Sec-

1 retary shall notify the Governor or other
2 appropriate official of the State, issue a
3 public announcement, and, file for publica-
4 tion in the Federal Register a statement of
5 the Secretary's findings, the action the
6 Secretary intends to take, the reasons for
7 the intended action, and, where prac-
8 ticable, an estimate of the anticipated du-
9 ration of the extraordinary emergency.

10 (ii) TIME SENSITIVE ACTIONS.—If it
11 is not possible to file for publication in the
12 Federal Register prior to taking action, the
13 filing shall be made within a reasonable
14 time, not to exceed 10 business days, after
15 commencement of the action.

16 (3) APPLICATION OF LEAST DRASTIC ACTION.—

17 No plant, biological control organism, plant product,
18 plant pest, noxious weed, article, or means of con-
19 veyance shall be destroyed, exported, or returned to
20 the shipping point of origin, or ordered to be de-
21 stroyed, exported, or returned to the shipping point
22 of origin under this section unless, in the opinion of
23 the Secretary, there is no less drastic action that is
24 feasible and that would be adequate to prevent the
25 dissemination of any plant pest or noxious weed new

1 to or not known to be widely prevalent or distributed
2 within and throughout the United States.

3 (4) PAYMENT OF COMPENSATION.—

4 (A) IN GENERAL.—The Secretary may pay
5 compensation to any person for economic losses
6 incurred by them as a result of action taken by
7 the Secretary under subsection (b)(1).

8 (B) FINALITY OF DECISIONS.—The deter-
9 mination by the Secretary of the amount of any
10 compensation to be paid under this subsection
11 shall be final and shall not be subject to judicial
12 review.

13 (c) ENFORCEMENT.—

14 (1) IN GENERAL.—The owner of any plant,
15 plant product, plant pest, noxious weed, article, or
16 means of conveyance destroyed or otherwise disposed
17 of by the Secretary under this section may bring an
18 action against the United States in any United
19 States District Court where the owner is found, re-
20 sides, transacts business, is licensed to do business,
21 or is incorporated, within one year after the destruc-
22 tion or disposal, and recover just compensation for
23 the destruction or disposal of the plant, biological
24 control organism, plant product, plant pest, noxious
25 weed, article, or means of conveyance (not including

1 compensation for loss due to delays incident to de-
2 termining eligibility for importation, entry, expor-
3 tation, movement in interstate commerce, or release
4 into the environment) if the owner establishes that
5 the destruction or disposal was not authorized under
6 this Act.

7 (2) PAYMENT OF JUDGMENTS.—Any judgment
8 rendered in favor of the owner shall be paid out of
9 the money in the Treasury appropriated for plant
10 pest control activities of the Department of Agri-
11 culture.

12 **SEC. 105. INSPECTIONS, SEIZURES, AND WARRANTS.**

13 The Secretary may, consistent with guidelines ap-
14 proved by the Attorney General:

15 (1) INSPECTIONS WITHOUT A WARRANT.—Stop
16 and inspect, without a warrant, any person or means
17 of conveyance moving—

18 (A) into the United States to determine
19 whether the person or means of conveyance is
20 carrying any plant, plant product, biological
21 control organism, plant pest, noxious weed, or
22 article subject to this Act;

23 (B) in interstate commerce upon probable
24 cause to believe that the person or means of
25 conveyance is carrying any plant, plant product,

1 biological control organism, plant pest, noxious
2 weed, or article subject to this Act; and

3 (C) in intrastate commerce from or within
4 any State, portion of a State, or premises quar-
5 antined under section 104(b) upon probable
6 cause to believe that the person or means of
7 conveyance is carrying any plant, plant product,
8 biological control organism, plant pest, noxious
9 weed, or article regulated under section 104(b)
10 or is moving subject to section 104(b).

11 (2) INSPECTION WITH A WARRANT.—

12 (A) IN GENERAL.—The Secretary may
13 enter, with a warrant, any premises in the
14 United States for the purpose of conducting in-
15 vestigations or making inspections and seizures
16 under this Act.

17 (B) APPLICATION AND ISSUANCE OF A
18 WARRANT.—Any United States judge, any
19 judge of a court of record in the United States,
20 or any United States magistrate judge may,
21 within the judge's or magistrate's jurisdiction,
22 upon proper oath or affirmation showing prob-
23 able cause to believe that there is on certain
24 premises any plant, plant product, biological
25 control organism, plant pest, noxious weed, arti-

1 cle, facility, or means of conveyance regulated
2 under this Act, issue a warrant for the entry
3 upon the premises to conduct any investigation
4 or make any inspection or seizure under this
5 Act. The warrant may be applied for and exe-
6 cuted by the Secretary or any United States
7 Marshal.

8 **SEC. 106. CONTROL OF GRASSHOPPERS AND MORMON**
9 **CRICKETS.**

10 (a) IN GENERAL.—Subject to the availability of
11 funds pursuant to this section, the Secretary shall carry
12 out a program to control grasshoppers and Mormon Crick-
13 ets on all Federal lands to protect rangeland.

14 (b) FUNDING.—

15 (1) AUTHORITY TO TRANSFER FUNDS.—

16 (A) IN GENERAL.—Except as provided in
17 paragraph (2), the Secretary shall expend or
18 transfer and, upon request, the Secretary of the
19 Interior shall transfer to the Secretary from
20 any no-year appropriations, funds for the pre-
21 vention, suppression, and control of actual or
22 potential grasshopper and Mormon Cricket out-
23 breaks on lands under the jurisdiction of the
24 Federal Government.

1 (B) TRANSFER REQUESTS.—Requests for
2 funds transferred pursuant to this section shall
3 be made as promptly as possible by the Sec-
4 retary.

5 (C) REPLENISHMENT OF TRANSFERRED
6 FUNDS.—Funds transferred pursuant to this
7 section shall be replenished by supplemental or
8 regular appropriations, which shall be requested
9 as promptly as possible.

10 (2) AVAILABILITY OF DEPARTMENT OF THE IN-
11 TERIOR FUNDS.—Funds transferred by the Sec-
12 retary of the Interior shall be available for the pay-
13 ment of obligations incurred on Federal lands sub-
14 ject to the jurisdiction of the Secretary of the Inte-
15 rior.

16 (3) LIMITATION.—No funds transferred to the
17 Secretary from the Secretary of the Interior shall be
18 made available under this subsection until funds spe-
19 cifically appropriated to the Secretary for grass-
20 hopper control have been exhausted.

21 (c) TREATMENT FOR GRASSHOPPERS AND MORMON
22 CRICKETS.—

23 (1) IN GENERAL.—Subject to the availability of
24 funds pursuant to this section, on request of the ad-
25 ministering agency or the Department of Agriculture

1 of an affected State, the Secretary, to protect range-
2 land, shall immediately treat Federal, State, or pri-
3 vate lands that are infested with grasshoppers or
4 Mormon Crickets at levels of economic infestation,
5 unless the Secretary determines that delaying treat-
6 ment will not cause greater economic damage to ad-
7 jacent owners of rangeland.

8 (2) OTHER PROGRAMS.—In carrying out this
9 section, the Secretary shall work in conjunction with
10 other Federal, State, and private prevention, control,
11 or suppression efforts to protect rangeland.

12 (d) FEDERAL COST SHARE OF TREATMENT.—The
13 Secretary shall—

14 (1) pay out of appropriated funds made avail-
15 able to the Secretary or transferred to the Secretary
16 by the Secretary of the Interior, 100 percent of the
17 cost of grasshopper or Mormon Cricket control on
18 Federal lands to protect rangeland; and

19 (2) pay out appropriated funds made available
20 to the Secretary—

21 (A) 50 percent of the cost of the control of
22 grasshopper or Mormon Cricket on State lands;
23 and

1 (B) 33.3 percent of the cost of the control
2 of grasshopper or Mormon Cricket on private
3 lands.

4 (e) TRAINING.—From appropriated funds made
5 available or transferred by the Secretary of the Interior
6 to the Secretary for such purposes, the Secretary shall
7 provide adequate funding for a program to train personnel
8 to accomplish effectively the objective of this section.

9 **SEC. 107. COOPERATION.**

10 (a) IN GENERAL.—The Secretary may cooperate with
11 other Federal agencies, States or political subdivisions of
12 States, national governments, local governments of other
13 nations, domestic or international organizations, domestic
14 or international associations, and other persons to carry
15 out this Act.

16 (b) RESPONSIBILITY.—The individual or entity co-
17 operating with the Secretary shall be responsible for the
18 authority necessary to conduct the operations or take
19 measures on all lands and properties within the foreign
20 country or State, other than those owned or controlled by
21 the United States, and for other facilities and means as
22 the Secretary determines necessary.

23 (c) TRANSFER OF BIOLOGICAL CONTROL METH-
24 ODS.—The Secretary may transfer to a State, Federal
25 agency, or other person biological control methods utiliz-

1 ing biological control organisms against plant pests or
2 noxious weeds.

3 (d) COOPERATION IN PROGRAM ADMINISTRATION.—

4 The Secretary may cooperate with State authorities or
5 other persons in the administration of programs for the
6 improvement of plants, plant products, and biological con-
7 trol organisms.

8 **SEC. 108. CERTIFICATION FOR EXPORTS.**

9 The Secretary may certify as to the freedom of
10 plants, plant products, or biological control organisms
11 from plant pests or noxious weeds or exposure of plants,
12 plant products, or biological control organisms to plant
13 pests or noxious weeds according to the phytosanitary or
14 other requirements of the countries to which the plants,
15 plant products, or biological control organisms may be ex-
16 ported.

17 **SEC. 109. BUILDINGS, LAND, PEOPLE, CLAIMS, AND AGREE-**
18 **MENTS.**

19 (a) IN GENERAL.—The Secretary may acquire and
20 maintain all real or personal property for special purposes
21 and employ any persons, make grants, and enter into any
22 contracts, cooperative agreements, memoranda of under-
23 standing, or other agreements, necessary for carrying out
24 this Act.

25 (b) TORT CLAIMS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Secretary may pay tort claims in the
3 manner authorized in the first paragraph of 28
4 U.S.C. 2672 when the claims arise outside the
5 United States in connection with activities that are
6 authorized under this Act.

7 (2) REQUIREMENTS OF CLAIM.—A claim may
8 not be allowed under this subsection unless it is pre-
9 sented in writing to the Secretary within two years
10 after the claim accrues.

11 **SEC. 110. REIMBURSABLE AGREEMENTS.**

12 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—
13 The Secretary may enter into reimbursable fee agreements
14 with persons for preclearance of plants, plant products,
15 biological control organisms, and articles at locations out-
16 side the United States for movement to the United States.

17 (b) FUNDS COLLECTED FOR PRECLEARANCE.—
18 Funds collected for preclearance shall be credited to ac-
19 counts which may be established by the Secretary for this
20 purpose and shall remain available until expended for the
21 preclearance activities without fiscal year limitation.

22 (c) PAYMENT OF EMPLOYEES.—

23 (1) IN GENERAL.—Notwithstanding any other
24 law, the Secretary may pay employees of the United
25 States Department of Agriculture performing serv-

1 ices relating to imports into and exports from the
2 United States, for all overtime, night, or holiday
3 work performed by them, at rates of pay established
4 by the Secretary.

5 (2) REIMBURSEMENT OF THE SECRETARY.—

6 (A) IN GENERAL.—The Secretary may re-
7 quire persons for whom the services are per-
8 formed to reimburse the Secretary for any sums
9 of money paid by the Secretary for the services.

10 (B) USE OF FUNDS.—All funds collected
11 under this subsection shall be credited to the
12 account that incurs the costs and shall remain
13 available until expended without fiscal year lim-
14 itation.

15 (d) LATE PAYMENT PENALTIES.—

16 (1) COLLECTION.—Upon failure to reimburse
17 the Secretary in accordance with this section, the
18 Secretary may assess a late payment penalty, and
19 the overdue funds shall accrue interest, as required
20 by 31 U.S.C. 3717.

21 (2) USE OF FUNDS.—Any late payment penalty
22 and any accrued interest shall be credited to the ac-
23 count that incurs the costs and shall remain avail-
24 able until expended without fiscal year limitation.

1 **SEC. 111. VIOLATIONS—PENALTIES.**

2 (a) CRIMINAL PENALTIES.—Any person who know-
3 ingly violates this Act, or who knowingly forges, counter-
4 feits, or, without authority from the Secretary, uses, al-
5 ters, defaces, or destroys any certificate, permit, or other
6 document provided for in this Act shall be guilty of a mis-
7 demeanor, and, upon conviction, shall be fined in accord-
8 ance with the provisions of title 18, United States Code,
9 imprisoned for a period not exceeding one year, or fined
10 and imprisoned.

11 (b) CIVIL PENALTIES.—

12 (1) IN GENERAL.—Any person who violates this
13 Act, or who forges, counterfeits, or, without author-
14 ity from the Secretary, uses, alters, defaces, or de-
15 stroy any certificate, permit, or other document
16 provided for in this Act may, after notice and oppor-
17 tunity for a hearing on the record, be assessed a
18 civil penalty by the Secretary which does not exceed
19 the greater of—

20 (A) \$50,000 in the case of an individual,
21 \$250,000 in the case of any other person for
22 each violation; and \$500,000 for all violations
23 adjudicated in a single proceeding; or

24 (B) twice the gross gain or gross loss for
25 any violation or forgery, counterfeiting, or un-
26 authorized use, defacing or destruction of a cer-

1 tificate, permit, or other document provided for
2 in this Act that results in the person deriving
3 pecuniary gain or causing pecuniary loss to an-
4 other.

5 (2) FACTORS IN DETERMINING CIVIL PEN-
6 ALTY.—In determining the amount of a civil penalty,
7 the Secretary shall take into account the nature, cir-
8 cumstance, extent, and gravity of the violation or
9 violations and the Secretary may consider, with re-
10 spect to the violator, ability to pay, effect on ability
11 to continue to do business, any history of prior viola-
12 tions, the degree of culpability, and any other factors
13 the Secretary deems appropriate.

14 (3) SETTLEMENT OF CIVIL PENALTIES.—The
15 Secretary may compromise, modify, or remit, with or
16 without conditions, any civil penalty that may be as-
17 sessed under this section.

18 (4) FINALITY OF ORDERS.—The order of the
19 Secretary assessing a civil penalty shall be treated as
20 a final order reviewable under chapter 158 of title
21 28, United States Code. The validity of the Sec-
22 retary's order may not be reviewed in an action to
23 collect the civil penalty. Any civil penalty not paid in
24 full when due under an order assessing the civil pen-
25 alty shall thereafter accrue interest until paid at the

1 rate of interest applicable to civil judgments of the
2 courts of the United States.

3 (c) LIABILITY FOR ACTS OF AN AGENT.—When con-
4 struing and enforcing this Act, the act, omission, or failure
5 of any officer, agent, or person acting for or employed by
6 any other person within the scope of his or her employ-
7 ment or office, shall be deemed also to be the act, omis-
8 sion, or failure of the other person.

9 (d) GUIDELINES FOR CIVIL PENALTIES.—The Sec-
10 retary shall coordinate with the Attorney General to estab-
11 lish guidelines to determine under what circumstances the
12 Secretary may issue a civil penalty or suitable notice of
13 warning in lieu of prosecution by the Attorney General of
14 a violation of this Act.

15 **SEC. 112. ENFORCEMENT.**

16 (a) COLLECTION OF INFORMATION.—

17 (1) IN GENERAL.—The Secretary may gather
18 and compile information and conduct any investiga-
19 tions the Secretary deems necessary for the adminis-
20 tration and enforcement of this Act. The Secretary
21 shall at all reasonable times have the right to exam-
22 ine and copy any documentary evidence of any per-
23 son being investigated or proceeded against.

24 (2) SUBPOENAS.—

1 (A) IN GENERAL.—The Secretary shall
2 have power to subpoena the attendance and tes-
3 timony of any witness, and the production of all
4 documentary evidence relating to the adminis-
5 tration or enforcement of this Act or any mat-
6 ter under investigation in connection with this
7 Act.

8 (B) LOCATION OF PRODUCTION.—The at-
9 tendance of any witness and production of doc-
10 umentary evidence may be required from any
11 place in the United States at any designated
12 place of hearing.

13 (C) ENFORCEMENT OF SUBPOENA.—In
14 case of disobedience to a subpoena by any per-
15 son, the Secretary may request the Attorney
16 General to invoke the aid of any court of the
17 United States within the jurisdiction in which
18 the investigation is conducted, or where the per-
19 son resides, is found, transacts business, is li-
20 censed to do business, or is incorporated in re-
21 quiring the attendance and testimony of any
22 witness and the production of documentary evi-
23 dence. The court may, in case of a refusal to
24 obey a subpoena issued to any person, order the
25 person to appear before the Secretary and give

1 evidence concerning the matter in question or
2 to produce documentary evidence. Any failure
3 to obey the court's order may be punished by
4 the court as a contempt of the court. Witnesses
5 summoned by the Secretary shall be paid the
6 same fees and mileage that are paid to wit-
7 nesses in courts of the United States, and wit-
8 nesses whose depositions are taken and the per-
9 sons taking the depositions shall be entitled to
10 the same fees that are paid for similar services
11 in the courts of the United States.

12 (b) AUTHORITY OF THE ATTORNEY GENERAL.—The
13 Attorney General may—

14 (1) prosecute, in the name of the United States,
15 all criminal violations of this Act that are referred
16 to the Attorney General by the Secretary or are
17 brought to the notice of the Attorney General by any
18 person;

19 (2) bring an action to enjoin the violation of or
20 to compel compliance with this Act, or to enjoin any
21 interference by any person with the Secretary in car-
22 rying out this Act, whenever the Secretary has rea-
23 son to believe that the person has violated, or is
24 about to violate this Act, or has interfered, or is
25 about to interfere, with the Secretary; and

1 (3) bring an action for the recovery of any un-
2 paid civil penalty, funds under reimbursable agree-
3 ments, late payment penalty, or interest assessed
4 under this Act.

5 (c) COURT JURISDICTION.—Except as provided in
6 section 111(b), the United States district courts, the Dis-
7 trict Court of Guam, the District Court of the Virgin Is-
8 lands, the highest court of American Samoa, and the
9 United States courts of other territories and possessions
10 are vested with jurisdiction in all cases arising under this
11 Act. Except as provided in section 111(b), any action aris-
12 ing under this Act may be brought, and process may be
13 served in the judicial district where a violation or inter-
14 ference occurred or is about to occur, or where the person
15 charged with the violation, interference, impending viola-
16 tion, impending interference, or failure to pay resides, is
17 found, transacts business, is licensed to do business, or
18 is incorporated.

19 (d) SCOPE OF SUBPOENA.—Subpoenas for witnesses
20 to attend court in any judicial district or to testify or
21 produce evidence at an administrative hearing in any judi-
22 cial district in any action or proceeding arising under this
23 Act may run to any other judicial district.

1 **SEC. 113. APPROPRIATIONS AND TRANSFER AUTHORITY.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—There
3 are authorized to be appropriated such sums of money as
4 may be necessary to carry out this Act. Except as specifi-
5 cally authorized by law, no part of the money appropriated
6 under this subsection shall be used to pay indemnities for
7 property injured or destroyed by or at the direction of the
8 Secretary.

9 (b) AUTHORITY TO TRANSFER CERTAIN FUNDS.—
10 The Secretary may, in connection with an emergency in
11 which a plant pest or noxious weed threatens any segment
12 of the agricultural production of the United States, trans-
13 fer from other appropriations or funds available to the
14 agencies or corporations of the United States Department
15 of Agriculture any sum of money as the Secretary may
16 deem necessary to be available in the emergency for the
17 arrest, control, eradication, and prevention of the spread
18 of the plant pest or noxious weed and for related expenses.
19 Any funds transferred under this subsection shall remain
20 available for such purposes without fiscal year limitation.

21 **SEC. 114. REGULATIONS AND ORDERS.**

22 The Secretary may issue any regulations or orders
23 as the Secretary deems necessary to carry out this Act.
24 The regulations or orders may include, but are not limited
25 to, provisions concerning—

1 (1) notification of arrival plants, plant products,
2 biological control organisms, plant pests, noxious
3 weeds, articles, or means of conveyance;

4 (2) prohibition or restriction of the importation,
5 entry, exportation, or movement in interstate com-
6 merce of plants, plant products, biological control or-
7 ganisms, plant pests, noxious weeds, articles, and
8 means of conveyance;

9 (3) holding, seizure, quarantine, treatment, ap-
10 plication of remedial measures to, destruction, and
11 disposal of plants, biological control organisms, plant
12 products, plant pests, noxious weeds, articles, prem-
13 ises, or means of conveyance;

14 (4) in the case of an extraordinary emergency,
15 prohibition or restriction upon the intrastate move-
16 ment of plants, biological control organisms, plant
17 pests, noxious weeds, plant products, articles, and
18 means of conveyance;

19 (5) payment of compensation;

20 (6) cooperation with other Federal agencies,
21 States, political subdivisions of States, national gov-
22 ernments, local governments of other nations, inter-
23 national organizations, international associations,
24 and other persons, entities, and individuals;

- 1 (7) facilitation of transfer of biological control
- 2 methods for plant pests or noxious weeds;
- 3 (8) negotiation and execution of agreements;
- 4 (9) acquisition and maintenance of real and
- 5 personal property;
- 6 (10) issuance of letters of warming;
- 7 (11) compilation of information;
- 8 (12) investigations;
- 9 (13) transfer of funds for emergencies;
- 10 (14) approval of facilities and means of convey-
- 11 ance;
- 12 (15) denial of approval of facilities and means
- 13 of conveyance;
- 14 (16) suspension and revocation of approval of
- 15 facilities and means of conveyance;
- 16 (17) inspection, testing, and certification;
- 17 (18) cleaning and disinfection;
- 18 (19) designation of ports of entry;
- 19 (20) imposition and collection of fees, penalties,
- 20 and interest;
- 21 (21) making or maintaining records and mark-
- 22 ing and identification;
- 23 (22) issuance of permits and phytosanitary cer-
- 24 tificates;

1 (23) establishment of quarantines, post-import-
2 tation conditions, and post-entry quarantine condi-
3 tions;

4 (24) establishment of treatment requirements;

5 (25) establishment of conditions for transit
6 movement through the United States; and

7 (26) treatment of land for the prevention, sup-
8 pression, or control of plant pests or noxious weeds.

9 **SEC. 115. PREEMPTION.**

10 (a) REGULATION OF FOREIGN COMMERCE.—No
11 State or political subdivision of a State may regulate in
12 foreign commerce any article, means of conveyance, plant,
13 biological control organism, plant pest, noxious weed, or
14 plant product in order to control a plant pest or noxious
15 weed, eradicate a plant pest or noxious weed, or prevent
16 the introduction or dissemination of a biological control
17 organism, plant pest or noxious weed.

18 (b) REGULATION OF INTERSTATE COMMERCE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), no State or political subdivision of a
21 State may regulate the movement in interstate com-
22 merce of any article, means of conveyance, plant, bi-
23 ological control organism, plant pest, noxious weed,
24 or plant product in order to control a plant pest or
25 noxious weed, eradicate a plant pest or noxious

1 weed, or prevent the introduction or dissemination of
2 a biological control organism, plant pest or noxious
3 weed, if the Secretary has issued a regulation or
4 order to prevent the dissemination of the biological
5 control organism, plant pest or noxious weed within
6 the United States.

7 (2) EXCEPTIONS.—

8 (A) REGULATIONS CONSISTENT WITH FED-
9 ERAL REGULATIONS.—A State or a political
10 subdivision of a State may impose prohibitions
11 or restrictions upon the movement in interstate
12 commerce of articles, means of conveyance,
13 plants, biological control organisms, plant pests,
14 noxious weeds, or plant products that are con-
15 sistent with and do not exceed the regulations
16 or orders issued by the Secretary.

17 (B) SPECIAL LOCAL NEED.—A State or
18 political subdivision of a State may impose pro-
19 hibitions or restrictions upon the movement in
20 interstate commerce of articles, means of con-
21 veyance, plants, plant products, biological con-
22 trol organisms, plant pests, or noxious weeds
23 that are in addition to the prohibitions or re-
24 strictions imposed by the Secretary, if the State
25 or political subdivision of a State demonstrates

1 to the Secretary and the Secretary finds that
2 there is a special need for additional prohibi-
3 tions or restrictions based on sound scientific
4 data or a thorough risk assessment.

5 **SEC. 116. SEVERABILITY.**

6 If any provision of this Act or application of any pro-
7 vision of this Act to any person or circumstances is held
8 invalid, the remainder of this Act and the application of
9 the provision to other persons and circumstances shall not
10 be affected by the invalidity.

11 **SEC. 117. REPEALS.**

12 The following provisions of law are hereby repealed:

13 (1) The Plant Quarantine Act, as amended (7
14 U.S.C. 151–164a and 167);

15 (2) The Federal Plant Pest Act, as amended (7
16 U.S.C. 150aa–250jj);

17 (3) Except section 2509(b) of the Food, Agri-
18 culture, Conservation, and Trade Act of 1990 (7
19 U.S.C. 147a(f)), section 102 of the Department of
20 Agriculture Organic Act of 1944, as amended (7
21 U.S.C. 147a);

22 (4) Except section 1453 of the Food, Agri-
23 culture, Conservation, and Trade Act of 1990 (7
24 U.S.C. 2814), the Federal Noxious Weed Act of
25 1974, as amended (7 U.S.C. 2801–2814);

1 (5) The Mexican Border Act, as amended (7
2 U.S.C. 149);

3 (6) Joint Resolution of April 6, 1937 (7 U.S.C.
4 148–148e);

5 (7) The Act of August 28, 1950 (7 U.S.C.
6 2260);

7 (8) The Halogeton Glomeratus Act (7 U.S.C.
8 1651–1656);

9 (9) The Golden Nematode Act (7 U.S.C. 150–
10 150g);

11 (10) The Act of December 23, 1985 (7 U.S.C.
12 148f); and

13 (11) The Act of September 25, 1981 (7 U.S.C.
14 147b).

○